



NATIONAL AUTOMOBILE DEALERS ASSOCIATION
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Legal & Regulatory Group

February 19, 2002

Docket Management
Room PL-401
400 Seventh Street, SW
Washington, DC 20590

Re: Motor Vehicle Safety; Disposition of Recalled Tires; 49 CFR
Part 573; Docket No. NHTSA-2001-10856

Ladies and Gentlemen:

The National Automobile Dealers Association (NADA) represents 20,000 franchised automobile and truck dealers who sell new and used motor vehicles and engage in service, repair and parts sales. Together they employ in excess of 1,000,000 people nationwide, yet more than 60% are small businesses as defined by the Small Business Administration.

Late last year, NHTSA requested comment on a proposal to amend its regulation on defect and noncompliance information reporting to implement Section 7 of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. 49 USC 30120(d); 66 Fed. Reg. 65165, *et seq.* (December 18, 2001). Section 7 specifically requires manufacturer remedy programs to prevent the resale of recalled tires for use on motor vehicles and account for the disposition of replaced tires through shredding, crumbling, recycling, recovery, or other beneficial non-vehicular uses.

All dealerships sell new vehicles with new tires and used vehicles with used or new tires. Increasingly, dealers also sell new tires to service customers. For example, in recent years both Ford Motor Company and General Motors have instituted programs encouraging dealers to get into the tire sales business. In fact, Ford and Lincoln Mercury Certified Tire Dealers played a major role in helping to address pre-TREAD Act Firestone tire concerns. Of course, all retailers who sell new tires necessarily manage replaced used tires. Excepting recalls, used tire management practice decisions are governed first by whether the replaced tire has any value as a tire for reuse on a motor vehicle, second by the beneficial non-vehicular tire management marketplace, and third by any applicable state or local law.

When dealing with replaced recalled tires, management practice decisions are based on a

somewhat different set of criteria. Sections 3(c) and 8 of the TREAD Act effectively prohibit the retail sale of any used recalled tire, except when already installed on a used vehicle. 49 USC §§ 30120(j) and 49 USC §30166(n). Dealerships participating in a tire recall are not going to install those tires on a vehicle or knowingly sell them to someone who will.

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What they will do is follow the explicit instructions of the tire or vehicle manufacturer. This may involve rendering those tires useless for reuse or recap (i.e., by drilling holes in the sidewall) or returning them to the tire manufacturer. Under the Act, dealers must be fairly reimbursed for any costs associated with managing recalled tires. 49 USC §30120(f).

Like all recyclable, reusable, or disposable commodities, the value of used tires varies with market conditions. Moreover, given Section 7 of the TREAD Act, the value of recalled used tires will vary exclusively with their beneficial non-vehicular market value. A manufacturer's plan normally should involve a take-back program and they, not retailers, should physically arrange for tire disposition. This is especially important in the rare case of a large scale recall, such as Firestone/Ford. Alternatively, a remedy plan could instruct dealers and other retailers to use transporters and management facilities chosen by the manufacturer. Under this approach, the manufacturer would still arrange for and have legal liability for tire disposition. Either alternative would provide greater assurance of proper tire disposition than a requirement that manufacturers simply instruct retailers to comply with applicable law.

What is a "manufacturer-controlled" outlet? Franchised automobile dealerships are very influenced by the automobile manufacturers with whom they have an agreement to sell and service vehicles, but are neither owned by nor even controlled by them. Moreover, it shouldn't matter whether a retailer is owned by, controlled by, or totally independent from a recalling tire or vehicle manufacturer. As stated above, all plans should provide for appropriate, recall-specific instructions to prevent used recalled tire reuse and should arrange for their take-back or their disposition to manufacturer-selected tire management facilities.

The proposed exception reporting requirement seems unnecessary. Even in the event of a collapse of the beneficial non-vehicular use marketplace, manufacturers should be able to arrange to stockpile used recalled tires in an environmentally safe manner until such time as their marketability returns. As an alternative to exception reporting, manufacturers should be required to file reports only if and when forced to arrange for

A handwritten signature in black ink, reading "Douglas J. Greenhaus". The signature is written in a cursive style and is positioned over a black rectangular background.

On behalf of NADA, I thank NHTSA for the opportunity to comment on this matter.

Sincerely,

Douglas I. Greenhaus
Director, Environment, Safety and Health